

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3418 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTKUMAR CHATURBHAI PATEL

Versus

C N SHAH , CHAIRMAN

Appearance:

MR AN PATEL for Petitioner

MR RAJESH DESAI FOR MR PRASHANT G DESAI for Respondent

No. 1, 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 21/01/2000

ORAL JUDGEMENT

The petitioner before this Court has prayed the following reliefs :-

- (a) to issue a writ of mandamus or any other appropriate writ, direction or order, directing respondent no.1 to make appointment of Field Supervisors

according to the merit list, and to appoint the petitioner as a Field Supervisor pursuant to the letter annexure:C, dated 7.8.1985;

(b) to issue an interim relief restraining respondent no.1 from appointing or giving charge of the post of Field Supervisor to anybody from the waiting list, during the pendency of this petition;

(c) xxxx xxxx xxxx

(d) xxxx xxxx xxxx

2. The petitioner has prayed that this Court should invoke jurisdiction under Article 226 of the Constitution of India and respondents should be directed to appoint the petitioner as Field Supervisor in Banaskantha Mehsana Gramin Bank (hereinafter referred to as the bank) sponsored by Dena Bank under the Regional Rural Banks Act, 1976 (hereinafter referred to as the Act). According to the petitioner, respondents have failed in appointing him as a Field Supervisor inspite of his selection and placement in merit list and instead have appointed other candidates who were on waiting list of Field Supervisor. By stating certain personal facts as to his qualifications and competence, the petitioner has averred that Mr. C.N.Shah, the then Chairman of the Bank (respondent no.1) had indulged in malpractice in recruitment of Field Supervisors and so inquiries were initiated against respondent no.1 by Senior Officials of the Sponsore Bank i.e. Dena Bank at Bombay. It is positively averred that in the inquiry, Sponsorer Bank may perhaps take steps against respondent no.1, but it will not give appointment to the petitioner as Field Supervisor and, therefore, this Court should exercise its discretion under Article 226 of the Constitution of India and reliefs as prayed for in this petition be granted. The grievance of the petitioner is that three persons named in para-8 of the petition were appointed by Respondent No.1 as Field Supervisors ignoring the selection of the petitioner.

3. Learned counsel Mr. A.N. Patel appearing for the petitioner has taken me through the averments made in the petition, affidavit filed in support of the case of the petitioner and the affidavits filed by Respondent No.1 Mr. C.N.Shah. I am told that respondent No.1 Mr. C.N.Shah is now no more. I have perused the documents produced by the parties and have considered the affidavits filed by the parties. Learned counsel Mr.

Rajesh Desai for Mr. Prashant G.Desai for Respondent Nos. 1 & 2 resisted this petition. On close scrutiny of the facts averred by the petitioner as reflected from the documents relied on and produced by the parties, in my view, irrespective of all the sympathy with the petitioner, the reliefs prayed for by him in this petition, cannot legally be granted to him. In my view, the fact of alleged malpractice averred by the petitioner indicates that certain disputed questions of facts are involved in the matter. Mr. Patel, learned counsel appearing for the petitioner has tried to compare signature of respondent no.1 on the document relied upon by the petitioner with other undisputed signatures of respondent no.1 on other documents available on record. It would not be legal and proper to compare the signatures in the writ petition under Article 226 of the Constitution of India. This is a case wherein certain crucial facts require detailed evaluation. There is a reference of inquiry initiated by the Sponsor Bank and it is the say of respondent no.1 in his affidavit that the letters allegedly received by the petitioner are not genuine and they are concocted. It would not be legal and proper to accept this finding or to accept the word of the petitioner by comparing signatures in the letters produced by the petitioner when allegation of malpractice is specifically alleged in this case. It is also pertinent to note that persons who are appointed, as per the averments made by the petitioner in para-8 of the petition, are not joined as party- respondents. Under the circumstances, it would not be legal and proper to grant any enforceable relief to the petitioner which would adversely and gravely affect those three persons in their absence. Though these three persons are named in para-8 of the petition, but they are not joined as party-respondents. Scope and jurisdiction of this Court under Article 226 of the Constitution is very wide, but the same is to be exercised with utmost care and caution and this Court should not venture in evaluating the disputed questions of facts even when there is ample scope, on such evaluation, to record contrary finding. If the say of the Bank is accepted that letters received by the petitioner are concocted, then petitioner has no case, but if the finding is in favour of the petitioner viz. that the letters were signed by the then chairman Mr.Shah, even then, in view of above facts, it would not be legal and proper to record such finding unless the say of the respondent Bank is properly evaluated in all legal perspective. This would amount to appreciation of disputed question of facts. Under these circumstances, this is not a case wherein this Court should exercise its jurisdiction under Article 226 of the Constitution.

4. Before parting, I intend to observe that in certain documents which have been shown to this Court by learned counsel Mr. Patel for the petitioner, it has been averred that there was a large-scale malpractice in recruitment in Gramin Banks throughout the country during that relevant period, but that would help the petitioner in view of discussion as aforesaid. This is not a case wherein exercise of discretion in favour of the petitioner, even can help him.

5. For the reasons aforesaid, petition fails and is hereby dismissed. Rule is discharged. Looking to the facts and circumstances of the case, no order as to costs.

21.1.2000 [C.K. BUCH, J]

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